



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/146329

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Alma Lezama

Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal seeking an extension of time to paying a BadgerCare+ premium.
3. The agency sent Petitioner a notice dated September 6, 2012 that informed Petitioner that as of October 1, 2012 her BadgerCare+ premium would be \$78 per month. It also warned her that if

she did not pay the monthly premium that her BadgerCare+ benefits would end and that she, as an adult, would not be able to re-enroll in the BadgerCare+ program for 12 months. That notice was sent to Petitioner at the above address. That notice did contain appeal instructions which noted the appeal deadline to be December 6, 2012.

4. Petitioner was sent a notice dated October 19, 2012 that informed Petitioner that as of November 1, 2012 her BadgerCare+ benefits were being discontinued because she had not paid her premium. It also informed her that if she wanted to stay enrolled in BadgerCare+ she must pay the premium by the end of November 2012. That notice was sent to Petitioner at the above address. That notice did contain appeal instructions which noted the appeal deadline to be December 17, 2012.
5. This appeal was filed with the Division of Hearings and Appeals on January 3, 2013.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning health care issues must be filed within 45 days of the date of that action. §49.45(5)(a), *Wis. Stats.* A negative action can be the denial of an application or the reduction or termination of an ongoing case. Petitioner's January 3, 2013 appeal is past the December 17, 2012 appeal deadline for the discontinuance of Petitioner's BadgerCare+ eligibility thus the Division of Hearings and Appeals does not have authority to make a determination on the merits of the matter.

CONCLUSIONS OF LAW

That Petitioner's appeal is untimely thus the Division of Hearings and Appeals does not have authority to make a determination on the merits of Petitioner's appeal.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of March, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 21, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability